

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

The California Department of Corrections and Rehabilitation (CDCR or the Department) proposes to amend Sections 3350.1, 3352, 3352.1, 3352.2, 3354, 3354.2, 3355.1 and 3358 of the California Code of Regulations (CCR), Title 15, Subchapter 4, Article 8, and to adopt new section 3352.3 within the same article. This rulemaking action will provide regulatory authority for ongoing improvements in the quality of dental and medical care provided to CDCR inmates.

UPDATES TO THE INITIAL STATEMENT OF REASONS

On March 20, 2012, the Department submitted to the Office of Administrative Law (OAL) a request for the emergency adoption of these regulations concerning dental and medical treatment provided to inmates in Department facilities. The request was approved effective March 28, 2012.

The proposed regulations were noticed to the public on April 27, 2012, and public comments were accepted through June 18, 2012. A public hearing was held on this date, at which there were no attendees. Three people and/or organizations provided comments during this comment period.

During the period of emergency authority, in response to public comments, the Department recognized the need to provide additional clarification of certain provisions contained in the regulatory text. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading “*Changes to the Text of Proposed Regulations Initially Noticed to the Public.*”

A rennotice of the amended text was distributed on July 13, 2012, to the three commenters who provided comments during the initial public comment period and was posted on the Department’s internet and intranet websites the same day. The Department accepted public comments from this date through August 8, 2012. One comment was received during this period.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file for this action.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS INITIALLY NOTICED TO THE PUBLIC

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

Section 3350.1. Medical and Dental Treatment/Service Exclusions

Subsection 3350.1(d)(2) is amended to capitalize the names of the two medical utilization review committees to maintain consistent formatting throughout the regulation text.

Section 3352. Institutional Utilization Management Committee

Subsection 3352(a) is amended to capitalize committee names and to add a sentence that specifies the timeframe of 21 calendar days for the Institutional Utilization Management committee to approve or disapprove a request for medical services from the treating physician. This addition is necessary to make the regulations clear and ensure requests are evaluated promptly. This timeframe is consistent with the Inmate Medical Services Policies and Procedures (IMSP&P) Utilization Management Program Policies and Procedures agreed upon by all parties in the *Plata* class action lawsuit. This document is available for public review on the California Correctional Health Care Services internet site at:

<http://www.cphcs.ca.gov/imspp.aspx>

Subsections 3352(b)(1) and (b)(2) are amended to correct a formatting error in the subsection headings.

Subsection 3352(c) is amended to specify that only licensed physicians may vote on the approval or disapproval of requests for medical services. This change is made to replace the word “matter” with the specific action of voting for the approval or disapproval of a request for medical services. This revision is necessary to clarify this provision.

Section 3352.1. Headquarters Utilization Management Committee

Subsection 3352.1(a) is amended to capitalize the name of the Headquarters Utilization Management committee and to add the name of the Institutional Utilization Management committee to maintain consistent formatting throughout the regulation text.

Subsection 3352.1(b)(6) is amended to add the correct subsection number, which was erroneously deleted in the original proposed text.

Subsection 3352.1(c) is amended to specify that utilization committee reviews must be completed within 60 calendar days of the initial request for medical services from the treating physician. This addition is

necessary to make the regulations clear and ensure the requests are evaluated promptly. This timeframe is consistent with the IMSP&P Utilization Management Program Policies and Procedures.

Section 3352.2. Dental Authorization Review Committee

Subsections 3352.2(b)(1) and (b)(2) are amended to correct capitalization errors.

Section 3352.3. Dental Program Health Care Review Committee

Subsection 3352.3(a) is amended to add the name of the Dental Authorization Review (DAR) committee for clarity and specify that the Dental Program Health Care Review Committee must make a decision within 15 business days of receipt from the DAR. This is necessary to make the regulations clear and to ensure these cases are evaluated promptly. This timeframe is consistent with the Inmate Dental Services Program (IDSP), Policies and Procedures agreed upon by CDCR and court representatives in the *Perez* class action. This document is available for public review on the CDCR internet site at:

<http://www.cdcr.ca.gov/DCHCS/docs/2010-August-PP.pdf>

Section 3354. Health Care Responsibilities and Limitations

Subsection 3354(f)(2) is amended to add the definition of the Dental Priority Classification 1, Urgent Care category that reflects the current IDSP, Policies and Procedures. This is necessary to specify the meaning of the term Urgent Care to provide clarity to inmates and health care staff.

Subsection 3354(f)(3) is amended to add the definition of the Dental Priority Classification 2, Interceptive Care category that reflects the current IDSP, Policies and Procedures. This is necessary to specify the meaning of the term Interceptive Care to provide clarity to inmates and health care staff.

Subsection 3354(f)(4) is amended to add the definition of the Dental Priority Classification 3, Routine Rehabilitative care category that reflects the current IDSP, Policies and Procedures. This is necessary to specify the meaning of the term Routine Rehabilitative Care to provide clarity to inmates and health care staff.

Section 3354.2. Inmate Copayment for Health Care Services

Subsection 3354.2(c)(1) is amended to remove the last sentence of the subsection. This provision has been relocated to new adopted subsection 3354.2(c)(2).

Existing Subsection 3354.2(c)(2) is renumbered to 3354.2(c)(3) to accommodate new adopted subsection 3354.2(c)(2).

New Subsection 3354.2(c)(2) is adopted to clarify inmate copayment requirements for services identified in their dental treatment plan. Unless the dental provider initiates the visit, there will be a copayment charged to the inmate requesting services. This is necessary to address clarity concerns in the original proposed text.

New Subsection 3354.2(c)(3) is adopted. The text previously located in 3354.2(c)(2) has been relocated here to accommodate new subsection 3354.2(c)(2).

Existing subsection 3354.2(c)(3) is renumbered to 3354.2(c)(4) to accommodate the new text contained in subsection 3354.2(c)(2).

Section 3355.1. Dental Care

Subsection 3355.1(a) is amended to clarify that inmates arriving at a reception center will receive two examinations, one by a licensed health care provider and the second from a licensed dentist. It is also amended to specify that inmates who remain in a reception center over 90 days may receive DPC 2 care if they request such care and the dental provider, in his or her professional judgment, deems such care necessary. This subsection incorporates by reference CDC Form 7362 (Rev. 03/04) Health Care Services Request Form. This form is a general, largely blank form used by inmates to request health care. The form is being made available for public review and is attached to the revised text.

Subsection 3355.1(b) is amended to add the notification to inmates that no copayment is required for the initial comprehensive examination at the assigned facility. This is necessary to provide clarity to inmates and staff and is consistent with the IDSP, Policies and Procedures.

Subsection 3355.1(c) is amended to add that pregnant inmates shall receive instruction in oral hygiene in addition to the other specified services related to periodontal disease prevention and that these services shall be provided regardless of the inmate's plaque index score. This is necessary to help ensure the health of pregnant inmates and is consistent with the IDSP, Policies and Procedures.

Subsection 3355.1(d) is amended to specify that the periodic comprehensive dental examinations for inmates do not require a copayment. This is necessary to provide clarity to inmates and staff and is consistent with the IDSP, Policies and Procedures.

PUBLIC HEARING COMMENTS:

A public hearing was held on June 18, 2012 at 10:00 a.m.

No comments were received at the hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD:

Commenter #1:

Comment #1: Commenter states a dental service provided in accordance with a prescribed treatment plan should be considered a follow-up appointment, and therefore not subject to co-payment. If the patient must return for multiple appointments because the dentist is not able to complete the required treatment, those appointments should be considered follow-ups at the dentist's order. The commenter states that if patients realize they will be charged a co-payment for each visit in a prescribed dental plan they will cease to visit the dentist until the problems becomes an emergency and therefore exempt from co-payment.

Accommodation: Partial. The regulatory provisions have been clarified to address the commenter's concern, but have not been substantively changed.

Response: The text of subsections 3354.2(c)(1) and (c)(2) was amended to clarify that visits initiated by the dental provider are not subject to a co-payment.

Comment #2: Commenter states that the institution in which he is housed fails to follow proper procedures regarding inmate requests for health care services.

Accommodation: None.

Response: This comment is outside the scope of the proposed regulations. If the commenter believes that the institution in which he is housed is in violation of regulations or policies, the proper course of action is to file an appeal through the existing inmate appeal process and pursue his complaints through that avenue.

Comment #3: Commenter states that not all inmates have access to computers to view the Inmate Dental Services Program, Policy and Procedures (IDSP, P&P) which were used to help draft the proposed regulations.

Accommodation: None.

Response: The IDSP, P&P was and is available by request at all institution dental program facilities.

Comment #4: Commenter states that removing the choice of vendor from the inmate (subsection 3358(c)) may impact businesses by depriving them of sales to inmates, and that the approval process may be susceptible to corruption.

Accommodation: None.

Response: The purpose of the amendment to require that vendors of artificial appliances be approved by the Department is to maintain standards of care and to ensure that inmates receive appropriate services with an acceptable level of quality.

Commenter #2:

Comment #1: Commenter states that proposed section 3352 requires the Institution Utilization Management committee to meet “as often as necessary” to review requests for otherwise excluded medical services. Commenter states this requirement fails to ensure the review will occur promptly and in compliance with court-approved settlements, which require review within 21 days of the request.

Accommodation: Yes. See response below.

Response: New text has been added to subsection 3352(a) to require the committee to render decisions within 21 calendar days of the request of the treating physician.

Comment #2: Commenter states that proposed subsection 3352.1(a) provides for the Utilization Management Committee to meet “as often as necessary” to review its cases. Commenter states that court-approved policies and procedures require that these cases must be reviewed within 60 days of the initial request from the treating physician.

Accommodation: Yes. See response below.

Response: New text has been added to subsection 3352.1(c) to require the committee to render decisions within 60 calendar days of the initial request of the treating physician.

Comment #3: Commenter states that proposed section 3352.3 requires the Dental Program Health Care Review Committee to meet “as often as necessary” to review cases for otherwise excluded dental services. Commenter states that court-approved policies and procedures require that these cases must be reviewed within 15 days of the initial request from the treating physician.

Accommodation: Yes. See response below.

Response: New text has been added to subsection 3352.3(a) to require the committee to render decisions within 15 business days of receipt.

Comment #4: Commenter states that proposed subsection 3355.1(a) must provide that all inmates must be screened for dental complaints upon arrival at a reception center, in accordance with court-approved policies and procedures.

Accommodation: Yes. See response below.

Response: New text has been added to subsection 3355.1(a) which provides that inmates arriving at a reception center shall receive an initial health care screening to identify urgent/emergent dental needs.

Comment #5: Commenter states that subsection 3355.1(a) provides that inmates at reception centers shall receive dental care only for emergency and urgent care dental conditions, as defined elsewhere in the proposed regulations. Commenter states that the term “urgent care” is not defined in the proposed regulations, and that the definition of this term must be added in this subsection or in section 3354.

Accommodation: Yes. See response below.

Response: New text has been added to subsection 3354(f)(2) establishing a definition of Urgent Care.

Comment #6: Commenter states that court-approved policies and procedures establish that inmates incarcerated at reception centers beyond ninety days may be eligible to receive DPC 2 care.

Accommodation: Yes. See response below.

Response: New text has been added to subsection 3355.1(a) establishing a process for inmates who remain in reception centers for ninety days or longer to request DPC 2 care.

Comment #7: Commenter states that the initial and periodic dental examinations described in subsections 3355.1(b) and 3355.1(d) are not subject to a co-payment, in accordance with court-approved policies and procedures. Commenter states that these subsections should be amended to specify that inmates shall be informed that these examinations are exempt from co-payment.

Accommodation: Yes. See response below.

Response: New text has been added to subsections 3355.1(b) and (d) stating that no co-payment is required for the comprehensive and periodic examinations described in these subsections.

Comment #8: Commenter states that subsection 3355.1(b)(3) provides that inmates with a plaque index score above 20% or who refuse oral hygiene instruction shall receive only emergency care, urgent care, interceptive care, and/or special needs care for dental conditions, as defined elsewhere in the proposed regulations. Commenter states that the terms “urgent care,” “interceptive care,” and special needs care are not defined in the proposed regulations, and that the definition of these terms must be added in this subsection or in section 3354.

Accommodation: Partial. See response below.

Response: New text has been added to subsections 3354(f)(2) and (f)(3) establishing a definition of Urgent Care and Interceptive Care, respectively. The Department contends that the explanation of the term Special Needs care contained in subsection 3354(f)(6) is clear.

Comment #9: Commenter states that subsection 3355.1(c), in order to be consistent with court-approved policies and procedures, must provide that pregnant inmates shall receive oral hygiene instruction and shall receive periodontal care regardless of the plaque index score.

Accommodation: Yes. See response below.

Response: New text has been added to this subsection which provides that pregnant inmates shall receive oral hygiene instruction and shall receive periodontal care regardless of their plaque index score.

Commenter #3:

Comment #1: Commenter is a dentist at the California Rehabilitation Center in Norco. Commenter states that some of the treatment/service exclusions specified under subsection 3350.1(c) are well established and documented as having clinical success and should not be described as having no established outcome on morbidity or improved mortality.

Accommodation: None

Response: The IDSP, Policies and Procedures are consistent with professionally accepted standards of correctional dental care and were approved by Court Representatives appointed by the federal court in the Perez case, the CDCR and Legal Counsel representing the inmates. The commenter may raise the issue as an internal matter.

Comment #2: Commenter states the proposed text of subsection 3350.1(d) should allow for root canal treatment on posterior teeth, and that the term “clinically necessary” used in subsection 3350.1(d)(1) needs a definition if it is different from “medically necessary.”

Accommodation: None

Response: The limitations to endodontic services are addressed in the IDSP, P&P agreed upon by the Court Representatives appointed by the federal court in the Perez case, the CDCR and Legal Counsel representing the inmates. A staff dentist who believes a root canal treatment on an inmate’s posterior tooth is clinically necessary may submit the case for review to the institution’s Dental Authorization Review Committee. The Department contends that the term “clinically necessary” is clear and unambiguous from the context in which it is used in the regulation text.

Comment #3: Commenter states that the IDSP, P&P has exclusionary criteria regarding root canal treatment that is not scientifically valid.

Accommodation: None

Response: This comment is outside the scope of the proposed changes to regulations. The IDSP, P&P, has been agreed upon by the Court Representatives appointed by the federal court in the Perez case, the CDCR and Legal Counsel representing the inmates. The commenter may raise the issue as an internal Department matter.

Comment #4: Commenter states that Section 3354 is “poorly written and confusing to clinicians in the field.” Commenter states that “professionally accepted guidelines for sequencing dental treatment should be incorporated into the policy” and suggests a list of phrases to use in place of the current treatment levels contained in this section.

Accommodation: None

Response: The Department contends the proposed regulations are clear and meet all relevant professionally accepted standards. The process of developing the regulation text included extensive consultation with and feedback from internal Department stakeholders including clinical staff. The comment regarding Section 3354 being “poorly written” is too vague and general for the Department to formulate a response. The commenter may raise the issue as an internal Department matter.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE RENOTICE PUBLIC COMMENT PERIOD:

Commenter #1: *Note: Commenter #1 is the same individual as Commenter #1 during the initial comment period.* Commenter states that “declaring subsequent dental services provided in a prescribed dental plan not follow up services and subject to co-payment charges is tantamount to permitting the dental department to gouge inmates for multiple co-payments for services rendered.” The commenter goes on to allege several practices at the facility in which he is incarcerated, such as a teeth cleaning being broken into two separate visits, both of which require the inmate to make a co-payment, and multiple fillings being spread over multiple visits, all requiring a co-payment. Commenter also alleges that inmates are required to sign a blank health care request form to make it appear their next dental appointment was initiated by the inmate.

Accommodation: None

Response: The Department contends that the provisions regarding inmate co-payments are fair and unambiguous, and in keeping with standards of practice in other correctional jurisdictions and the private sector. If the commenter believes that the institution in which he is housed is in violation of regulations or policies, the proper course of action is to file an appeal through the existing inmate appeal process and pursue his complaints through that avenue.